

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 6535**

**BILL NUMBER:** SB 164

**DATE PREPARED:** Dec 9, 2001

**BILL AMENDED:**

**SUBJECT:** IURC Fining Authority and Merchant Power Plants.

**FISCAL ANALYST:** John Parkey

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**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State

**Summary of Legislation:** This bill allows the Utility Regulatory Commission (IURC) to impose a civil penalty of not more than \$2,000 if a public utility fails to comply with: (1) a standard of service established by IURC rule; or (2) a rate or service requirement of an IURC order. The bill allows the IURC to impose an additional civil penalty of not more than \$4,000 if the IURC finds that the failure to comply demonstrates, by a continuing pattern of conduct, a willful disregard by the public utility of its obligation to remedy the failure. It exempts commercial mobile service, rural electric membership corporations, and rural telephone cooperatives from the civil penalties. The bill specifies that a suit to recover a civil penalty imposed by the IURC shall be brought by the Attorney General. It also allows the Attorney General to recover costs if the Attorney General prevails in the action.

The bill provides that merchant power plants are subject to the jurisdiction of the IURC. It requires the IURC to notify the local zoning authority of a petition for approval of a merchant power plant. It also requires the IURC to consider any land use plan or other relevant information provided by the local zoning authority.

**Effective Date:** Upon passage; July 1, 2002.

**Explanation of State Expenditures:** *Enforcement Authority:* This proposal allows the IURC to fine certain regulated utilities that fail to comply with service standards or requirements, as ordered by the Commission. The IURC is expected to be able to absorb any additional administrative costs associated with this proposal.

The proposal also authorizes the Attorney General to bring an action to *enforce* an order of the Commission. If more legal actions are sought, the administrative burden of the Attorney General's office may increase. However, since the bill allows the Attorney General to recover the reasonable cost of maintaining the action, the impact on the Office may be at least partially mitigated.

*Merchant Power Plants:* This bill places merchant power plants under the jurisdiction of the IURC. Under

this proposal, a new merchant power plant would be required to petition the IURC for approval to construct the facility. The bill allows the IURC to consider the following when reviewing a plant's petition: location, need, the plant's impact on utility suppliers and customers, financing, other factors that the Commission considers relevant, and information provided to the Commission by local authorities with zoning jurisdiction. The bill also requires the IURC to notify the appropriate county or municipal agency having zoning jurisdiction in the location where the merchant power plant is proposed within seven days after receiving a petition to approve a merchant plant.

Depending on the number of facilities that seek regulatory approval, this bill is expected to increase the administrative costs of the IURC. Any increase in the IURC's administrative costs, however, is expected to be absorbed using existing staff and resources.

*Background Information on Merchant Power Plants:* As of August 2001, there were seven merchant power plants operating in Indiana. Six plants have petitions currently under review with the IURC.

*Background on IURC and OUCC Funding:* The operating budgets of the IURC and OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2001, fees from the utilities and fines generated approximately \$8.6 M.

**Explanation of State Revenues:** The bill gives the IURC the authority to impose a penalty of up to \$2,000 on certain regulated utilities for each failure to comply with a service standard established by a Commission rule or with a rate or service order issued by the Commission. The bill also gives the Commission the authority to impose an additional fine of up to \$4,000 if the Commission finds that an offending utility has willfully disregarded its obligation to remedy previous failures. Civil penalties under this provision would be deposited in the state General Fund.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** Indiana Utility Regulatory Commission; Office of the Utility Consumer Counselor; Attorney General's Office.

**Local Agencies Affected:** Local units of government with zoning jurisdiction in areas with proposed merchant power plants.

**Information Sources:** Indiana Utility Regulatory Commission, *2000-2001 Annual Report*.